

## **REMARKS**

Pursuant to 37 C.F.R. §1.111, reconsideration of the instant application, as amended herewith, is respectfully requested. Entry of the amendment is requested.

Claims 15-50 are presently pending before the Office, with claims 1-14 being canceled herein. Applicant has amended the specification and the claims. New claims 15-26 are presented in the place and stead of the canceled claims 1-14 with the view that new claims are easier to evaluate than those amended by strike-throughs and underlining. The remaining new claims are based on indications of allowability by the Examiner.

New claim 15 is an amended equivalent to original claim 1. New claim 21 is an amended equivalent to original claim 8. New claim 27 is equivalent to combined claims 1 and 2, deemed allowable by the Examiner. New claim 31 is equivalent to combined claims 1 and 3, deemed allowable by the Examiner. New claim 35 is equivalent to combined claims 1 and 4, deemed allowable by the Examiner. New claim 39 is equivalent to combined claims 8 and 9, deemed allowable by the Examiner. New claim 43 is equivalent to combined claims 8 and 10, deemed allowable by the Examiner. New claim 47 is equivalent to combined claims 8 and 11, deemed allowable by the Examiner.

No new matter has been added. Support for the amendments can be found throughout the specification as originally filed. Applicant is not intending in any manner to narrow the scope of the originally filed claims.

The Examiner's Action mailed September 16, 2003 (Paper No. 4) and the references cited therein have been carefully studied by Applicant and the undersigned counsel. The amendments

appearing herein and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is believed to be in condition for allowance.

Relying on 35 U.S.C. §112, second paragraph, the Office has rejected the subject matter of claims 1, 5, 6, and 13 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention, in particular, for the reasons stated and not reiterated herein, on page 2 of the Office Action. Applicant respectfully traverses the rejection and requests reconsideration.

Applicant submits that the rejected claims do define the legal metes and bounds of the invention. It is not the role of the claims to enable one skilled in the art to reproduce the invention but rather to define, for those skilled in the art the legal metes and bounds of the invention. Nevertheless, in order to advance the case to allowance, the corresponding new claims reflect amendments to the rejected claims that Applicant submits overcomes the rejections.

It is respectfully submitted that new claims 15-50 fully comply with 35 U.S.C. §112, second paragraph. Withdrawal of the rejection is respectfully requested.

Relying on 35 U.S.C. §103(a), the Examiner has rejected the subject matter of claims 1 and 8 as obvious over Allen, claims 1, 5-7, 8, 12-14 as obvious over Kremer (and in view of Schwartz where noted), and claims 1, 5, 8 and 12 over Schwartz. Applicant respectfully traverses the rejection and requests reconsideration.

It is evident that Applicant's invention is decidedly different from the teachings of the cited patents.

The present invention has no similarity what so ever with what was claimed in Allen's patent. Allen adds starch to the phosphate flotation feed, in the beneficiation process, prior to cationic flotation of silica. The purpose was to depress phosphate particles to prevent the phosphate from floating with the silica. "... causes the phosphate ore particles to settle" means causes the phosphate particles to sink instead of float.

Allen teaches the addition of starch to first depress phosphate rock particles, followed by the addition of a cationic reagent (amine) to float the silica. Further, Allen teaches the use of a conventional amine surfactant. "Surfactant" in the present claims is defined as specific acid salts as delineated on page 2 of the specification, as amended herein. There is no teaching in Allen that would lead one of ordinary skill in the art to replace the amines of Allen with the acid salts (and/or polymers) of the present invention.

Kremer's field of invention relates to a method of reducing the viscosity of phosphate matrix slurries and improving the consolidation characteristics of phosphatic clays remaining in the water suspension **after the phosphate ore beneficiation process is completed, by dissolving the additive in the water utilized to form the slurry**, prior to the formation of the slurry, as compared to the known method of adding the additive to the slurry.

Though it may be well known in the art that surfactant can be added to the slurry to reduce viscosity (Col. 1, lines 41+), the purpose of the slurry viscosity reduction in Kremer is not for reducing phosphate ore losses in a desliming process.

Kremer is directed to a method of preventing the creation of slime ponds which retain water for years. Kremer states at col. 4, lls. 36-40: "It is imperative for the purposes of this invention to introduce the additive into the water prior to the contact thereof with the matrix." In addition, Kremer does not suggest the use of the use of the class of surfactants specifically defined

in the specification and claims, to reduce phosphate ore losses, a new and unobvious use over the disclosure of Kremer.

Schwartz (4,177,243) add naphthaleneformaldehyde sulfonate to phosphate rock slurry in the manufacture of phosphoric acid by the wet process to reduce the viscosity of the slurry, (the rock slurry is fed to the reactor where sulfuric acid and recycled acid are added). The purpose of reducing the viscosity of the slurry was to increase the pumpability or to reduce the water content of the slurry. Reducing the water content of the slurry provides a significant benefit to the wet process phosphoric acid.

Further, Schwartz does not suggest the use of the use of the class of surfactants claimed in the present invention to reduce phosphate ore losses, a new and unobvious use over the disclosure of Schwartz.

Accordingly, the Examiner has not established a prima facie case of obviousness.

Clearly, in the absence of any suggestion and/or in view of the absence of any teaching whatsoever of how one skilled in the art would attempt to use the cited art to produce the processes of the present invention, one skilled in the art would certainly not find ample motivation to use the features noted by the Examiner of the cited patents to arrive at the present invention.

The Office has used the claimed invention as a reference against itself as if it had preceded itself in time. Legal authority invalidates such an analytical or reverse engineering approach to patent examination. It is not Applicant's burden to refute the Office's position that it would have been obvious to one of ordinary skill in this art at the time this invention was made to arrive at the present invention in view of the cited patents. It is the burden of the Office to show some teaching or suggestion in the reference to support this allegation. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d at 1051, 5 U.S.P.Q.2d at 1438-39 (Fed. Cir. 1988).

A finding by the Office that a claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made based merely upon finding similar elements in a prior art reference would be "contrary to statute and would defeat the congressional purpose in enacting Title 35." Panduit Corp. v. Dennison Mfg. Co., 1 U.S.P.Q.2d 1593 at 1605 (Fed. Cir. 1987). Accordingly, Applicant respectfully submits that new claims 15-50 are patentable over the cited patents under 35 U.S.C. §103(a). Withdrawal of the rejection is respectfully requested.

### CONCLUSION

As the Federal Circuit observed in Orthopedic Equipment Co. v. United States, 702 F.2d 1005, 217 U.S.P.Q. 193 (Fed. Cir. 1983):

The question of nonobviousness is a simple one to ask, but difficult to answer ... The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of nonobviousness ...

Even though the initial claims in this important patent application were drawn to a new, useful and nonobvious invention, they have now been amended to increase their specificity of language and rewritten as claims 15-26. New claims 27-50 reflect the claims rewritten based on the Examiner's indication of allowability.

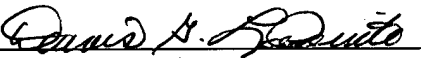
A Notice of Allowance is earnestly solicited.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an

Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 538-3800 would be appreciated.

Very respectfully,

Dated: 12/15/03

  
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